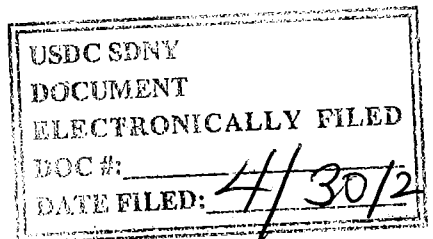


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
JACOB FRIEDMAN, individually and on :
behalf of all others similarly situated, :
Plaintiff, :

v. :

CAPITAL ACCOUNTS, LLC, :
Defendant. :
-----X

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

19 CV 7262 (VB) (JCM)

Briccetti, J.:

Before the Court is Magistrate Judge Judith C. McCarthy's Report and Recommendation ("R&R"), dated April 21, 2020, on plaintiff's motion for a default judgment. (Doc. #22).

Familiarity with the factual and procedural background of this case is presumed.

In the R&R, Judge McCarthy recommended denying with prejudice plaintiff's motion for a default judgment and request for statutory damages, attorneys' fees, and costs. Judge McCarthy also recommended that the putative class action complaint be dismissed in its entirety.

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Parties may raise objections to the magistrate judge's report and recommendation, but they must be "specific[,] written," and submitted within fourteen days after being served with a copy of the recommended disposition. Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1).

Insofar as a report and recommendation deals with a dispositive motion, a district court must conduct a de novo review of those portions of the report or specified proposed findings or recommendations to which timely objections are made. 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of a report and recommendation to which no timely objections

have been made, provided no clear error is apparent from the face of the record. Lewis v. Zon, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

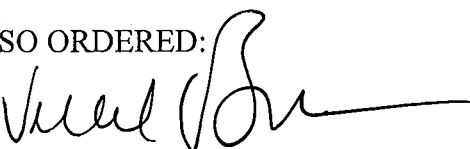
Plaintiff timely filed objections to the R&R. (Doc. #23). Plaintiff argues Judge McCarthy incorrectly concluded that plaintiff was required to allege that it was a legal impossibility for the alleged debt to increase due to interest or other charges, because in so doing Judge McCarthy disregarded the complaint's factual allegations and misapprehended the applicable case law.

Having conducted a careful de novo review of the magistrate judge's thorough and well-reasoned R&R, as well as plaintiff's objections, the applicable case law, and the underlying record, the Court concludes plaintiff has failed to state a claim upon which relief can be granted. As correctly explained in the R&R, plaintiff failed plausibly to plead the collection letter was misleading, because plaintiff did not allege interest or fees could not be legally imposed. See Avila v. Reliant Cap. Sols., LLC, 771 F. App'x 46, 47 (2d Cir. 2019) (summary order).

Accordingly, the Court adopts the R&R as the opinion of the Court. The motion for default judgment and for statutory damages, attorneys' fees, and costs is DENIED. The case is dismissed.

The Clerk is instructed to enter Judgment accordingly and close this case.

Dated: April 30, 2021
White Plains, NY

SO ORDERED:


Vincent L. Briccetti
United States District Judge